

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Numbering Resource Optimization

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CC Docket No. 99-200

**COMMENTS OF
T-MOBILE USA, INC.**

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SUMMARY

T-Mobile welcomes the efforts of the California Public Utility Commission ("CPUC") to improve the efficiency with which carriers utilize numbering resources. Although T-Mobile and the CPUC share the goal of ensuring that numbers are used efficiently so that premature area code relief is not necessary, T-Mobile does not believe that the CPUC's proposal to increase the contamination threshold will achieve this goal. Rather than delaying the need for area code relief, raising the contamination threshold will merely impose unnecessary regulatory burdens.

As an initial matter, the CPUC has likely overestimated the amount of thousand-number blocks that could be donated to number pools if the contamination threshold is increased to 25 percent. Specifically, NRUF data as of November 2002 indicates that there are 6,246 blocks in California that are between 10 and 25 percent contaminated (excluding paging and grandfathered codes), which is materially less than the 7,000 estimated by California. This amount most likely would decrease further by the time the threshold could be raised if the CPUC Petition were granted. Moreover, a significant amount of these blocks cannot be donated to number pools due to technical limitations. Thus, the total amount of blocks that raising the contamination threshold to 25 percent would make available for pooling would be significantly lower than the CPUC estimates.

Even if the CPUC's estimate were accurate, the total amount of blocks made available by raising the contamination threshold is not nearly as important as the overall effect that donation of those blocks will have on the life of the area codes. A close examination of the numbering data shows that raising the contamination threshold in California will impose significant costs and burdens upon carriers and consumers without having a materially

significant effect on the amount of available numbering resources or promoting more efficient number allocation and usage.

The CPUC claims that California's severe shortage of available numbers constitutes special circumstances warranting a deviation from the 10 percent contamination rule. However, even with a 25 percent contamination rule, the NPAs currently in imminent exhaust would still exhaust and require NPA relief. The solution to the current crisis is compliance with the Commission's rules and policies by immediately implementing area code relief in the form of an all-services overlay, not waiver of the Commission's 10 percent contamination threshold. Moreover, even if the CPUC could demonstrate that a 25 percent contamination threshold would be more efficient than a 10 percent contamination threshold in California, and it cannot, the CPUC could not demonstrate that requiring carriers to conform with different pooling requirements in different states would serve the public interest.

In sum, the CPUC has not demonstrated that the potential benefits of granting the waiver it requests outweigh the significant burdens of raising the contamination threshold, or that special circumstances warrant a deviation from the Commission's rules. In fact, strict compliance with the Commission's 10 percent contamination threshold and with the requirement that a state must implement area code relief on a timely basis would better serve the public interest. The Commission should instead ensure that carriers, particularly wireless carriers, are able to focus their resources on the national roll out of number pooling and portability. Number pooling is a far more important numbering optimization measure than raising the contamination threshold. Accordingly, the CPUC has not shown "good cause," and its petition for waiver must be denied.

TABLE OF CONTENTS

	Page
I. CALIFORNIA HAS NOT MET ITS BURDEN OF DEMONSTRATING GOOD CAUSE FOR THE WAIVER IT REQUESTS	1
A. Grant of the Requested Waiver Would Not Result in Significant Benefits at this Time	3
B. Grant of the Requested Waiver Would Impose Significant Burdens and Costs on Carriers and Consumers that Far Outweigh any Potential Benefits.....	6
C. No Special Circumstances Warrant A Deviation from the Commission's Rules	9
D. The Public Interest Is Served By Compliance With The Commission's Current Numbering Rules.....	10
II. FOCUSING RESOURCES ON NATIONAL ROLL OUT OF NUMBER POOLING AND PORTABILITY WOULD SERVE THE PUBLIC INTEREST FAR BETTER THAN GRANT OF THE REQUESTED WAIVER.....	11
III. CONCLUSION.....	13

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T-Mobile USA, Inc. ("T-Mobile")¹ submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") October 24, 2002 public notice requesting comment on the California Public Utilities Commission's ("CPUC") petition seeking waiver of the Commission's contamination threshold requirement.² T-Mobile opposes the CPUC Petition because the CPUC has not demonstrated the existence of special circumstances warranting a deviation from the Commission's rules, and strict compliance with the Commission's 10 percent contamination threshold would better serve the public interest.

I. CALIFORNIA HAS NOT MET ITS BURDEN OF DEMONSTRATING GOOD CAUSE FOR THE WAIVER IT REQUESTS

The FCC has the discretion to waive its rules "for good cause shown."³ As federal courts have explained, "the FCC may exercise its discretion to waive a rule where

¹ T-Mobile USA, Inc. (formerly known as VoiceStream Wireless Corporation), combined with Powertel, Inc., is the sixth largest national wireless provider in the U.S. with licenses covering approximately 94 percent of the U.S. population and currently serving over eight million customers. T-Mobile and Powertel, Inc. are wholly owned subsidiaries of Deutsche Telekom, AG and are part of its T-Mobile wireless division. Both T-Mobile and Powertel are, however, operated together and are referred to in these comments as "T-Mobile."

² Petition of the California Public Utilities Commission and of the People of the State of California for Waiver of the Federal Communications Commission's Contamination Threshold Rule at 4-6 (filed Sept. 5, 2002) ("*CPUC Petition*").

³ 47 C.F.R. § 1.3.

particular facts would make strict compliance inconsistent with the public interest.”⁴ Therefore, a “waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”⁵ “The burden . . . falls on the petitioner . . . to demonstrate the unique facts on which the Commission may rely in considering whether a waiver would be in the public interest.”⁶

In its petition, the CPUC claims that its “proposed deviation from the 10 percent contamination threshold does not undermine the public policy served by the current rule.”⁷ However, the CPUC fails to mention any of the significant burdens that implementation of its proposal would impose on carriers and consumers. A public interest analysis must consider not only the potential benefits of a waiver, but also the burdens associated with the waiver: The public interest would be served only if the benefits associated with the requested waiver far outweigh the associated burdens, particularly because the public interest is served by compliance with the Commission’s rules. Indeed, it is precisely for this reason that parties requesting waiver of the Commission’s rules face a high hurdle. Here, however, the CPUC has not demonstrated that the potential benefits of granting the waiver it requests outweigh the significant burdens of raising the contamination threshold, or that special circumstances warrant a deviation from the Commission’s rules, as explained in more detail below. In fact, compliance with the

⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972) (“*WAIT Radio*”).

⁵ *Request for Waiver by Marin County Office of Education, San Rafael, California*, 2002 FCC LEXIS 5898, ¶ 6 (Nov. 07, 2002).

⁶ *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 3518, ¶ 4 (2002).

⁷ *CPUC Petition* at 3.

Commission's 10 percent contamination threshold would better serve the public interest.

Accordingly, the CPUC has not shown "good cause," and its petition for waiver must be denied.

A. Grant of the Requested Waiver Would Not Result in Significant Benefits at this Time

The CPUC bases its waiver request solely upon its claim that "California can retrieve from carriers currently holding blocks of numbers, a larger quantity of numbers on average. Those thousand-number blocks, in turn, can be donated to active number pools, and will maximize the amount of available numbering resources in areas where number pooling has been implemented, and promote the Commission's goal of more efficient number allocation and usage."⁸ The CPUC estimates that "almost 7,000 blocks could be placed in pools in California if the CPUC can tap blocks contaminated between 10 percent and 25 percent."⁹

As an initial matter, the CPUC has likely overestimated the amount of thousand-number blocks that could be donated to number pools if the contamination threshold is increased to 25 percent. Specifically, NRUF data as of November 2002 indicates that there are 6,246 blocks in California that are between 10 and 25 percent contaminated (excluding paging and grandfathered codes), which is significantly less than the 7,000 estimated by California. This number most likely would decrease further by the time the threshold could be raised if the CPUC Petition were granted. Moreover, not all of these blocks can be donated to number pools. For example, a block cannot be donated to a number pool if it (1) is the carrier's sole block of numbers in that rate center, (2) contains the carrier's LRN, (3) is needed by the carrier to maintain a six-month inventory, (4) is a Type 1 wireless block (until November 24, 2003).

⁸ *CPUC Petition* at 1-2.

⁹ *Id.* at 5.

Although it is impossible to predict with accuracy the amount of non-poolable blocks until carriers analyze their inventory, a significant amount of blocks that fall between the 10 and 25 percent contamination thresholds will be non-poolable. For these reasons, the total amount of blocks that raising the contamination threshold to 25 percent would make available for pooling would be significantly lower than the CPUC estimates.

Even if the CPUC's estimate were accurate, the total amount of blocks made available by raising the contamination threshold is not nearly as important as the overall effect that donation of those blocks will have on the life of the area codes. The fact that raising the threshold in an area code would make 200 additional blocks available for pooling is of no real consequence if the area code nonetheless will exhaust in less than six months. As such, the Commission should focus on the overall difference between the predicted date of exhaust at a 10 percent contamination threshold and the predicted date of exhaust at a 25 percent contamination threshold, rather than the merely the quantity of blocks made available.

The CPUC Petition does not provide any specific information about the effect that raising the threshold would have on area code exhaust. Instead, the CPUC merely asserts that requiring carriers to donate "a larger quantity of numbers on average" will "maximize the amount of available numbering resources" and "promote the Commission's goal of more efficient number allocation and usage." A recent analysis by the "Contamination Levels Issue Management Group" of the North American Numbering Council ("NANC") demonstrates that grant of the CPUC Petition would not have a materially beneficial effect on the lives of area codes in California. Specifically, the analysis indicates that in area codes predicted to exhaust within the next five years, raising the contamination threshold to 25 percent would only delay

exhaust by an average of 5 ½ months,¹⁰ which is far too short to justify the burdens associated with raising the contamination threshold. In fact, raising the contamination threshold is predicted to delay exhaust by 12 months or more only in four area codes: 213 (which is not predicted to exhaust for another 31 years, 9 months); 530 (which is not predicted to exhaust for another 14 years, 1 month); 650 (which is not predicted to exhaust for another 9 years, 5 months); and 916 (which is not predicted to exhaust for another 9 years, 2 months).¹¹

Upon closer examination of the facts, however, it becomes clear that raising the contamination threshold in California will impose significant costs and burdens upon carriers, and ultimately consumers, without having a materially significant effect on the amount of available numbering resources or promoting the efficient allocation of numbering resources. Because pooling is done on a rate center basis, there is little benefit to having additional blocks or supply, unless those blocks eliminate the deficiencies in high demand rate centers. For example, in 310 Compton-Gardenia, the number of blocks available increases from 61 at 10 percent contamination to 87 at 25 percent contamination, but the annual forecasted demand is 255 blocks. Thus, the net result is still an insufficient numbering supply in that rate center.¹²

With respect to these area codes, or any area code that is not predicted to exhaust within the next five years, the Commission should allow wireless number pooling to take effect before determining whether further numbering resource optimization measures will even be necessary. Requiring wireless carriers to spend money now in order to change systems recently

¹⁰ See Contamination Levels Issue Management Group, NANC, 15, Table 2 (Dec. 6, 2002) (including area codes 310, 323, 408, 415, 510, 707, 714, 760, 805, 818, 909).

¹¹ *Id.*

¹² See Contamination Levels Issue Management Group, NANC, Appendix B (Dec. 6, 2002).

deployed for number pooling while these carriers are in the middle of the implementation of pooling in seven area codes per month through March of 2004 per the national roll out schedule, is not warranted at this time.

Another analysis by the “Contamination Levels Issue Management Group” of the NANC suggests that increasing the contamination threshold in California would have an even less significant effect on the life of most NPAs.¹³ This analysis indicates that most of the area codes will exhaust very soon after use of the blocks that would be available even with a contamination threshold of 25 percent, with only three area codes lasting six, eight and nine months longer. Indeed, exhaust will occur even quicker if carriers need any of these resources in order to maintain a six-month inventory. In eight of the 22 area codes, increase of the contamination threshold will have no effect whatsoever on the life of the area code. This analysis also indicates that there is not sufficient time to increase the contamination threshold before the affected area codes exhaust. Accordingly, grant of the requested waiver would not result in significant benefits at this time.

B. Grant of the Requested Waiver Would Impose Significant Burdens and Costs on Carriers and Consumers that Far Outweigh any Potential Benefits

Raising the contamination threshold as the CPUC proposes would impose significant burdens and costs on carriers and consumers. The CPUC Petition does not address any burdens or costs associated with its proposal, which suggests that the CPUC may not have performed an adequate public interest analysis by weighing the potential benefits of its proposal against the associated burdens and costs. It is impossible to determine whether waiver of a Commission rule would serve the public interest without performing an analysis of both the

¹³ *Id.* at 13, Table 1.

potential benefits along with the potential burdens and harms, and then comparing the net results to determine whether deviation from the Commission's rules are warranted. There is no indication on the record that the CPUC performed this analysis.

It is difficult to overestimate the burdens and costs that grant of the requested waiver would impose on all types of carriers, particularly during the implementation of wireless porting and pooling. T-Mobile, like other carriers, would also have to spend many hours planning the processes and procedures for increasing the contamination threshold to 25 percent, and then several more hours implementing these plans. For example, if the requested waiver were granted, T-Mobile would have to take the following steps:

- T-Mobile's Regional Code Administrators ("RCAs") must generate thousands-block contamination reports by rate center from T-Mobile's number administration system;
- RCAs must manually identify blocks potentially eligible for donation based on the higher contamination threshold and create an "Eligible List";
- RCAs must manually identify and remove administrative blocks from the Eligible List;
- RCAs must manually identify and remove blocks needed to maintain a six month inventory from the Eligible List;
- RCAs must prepare and transmit work orders to Customer Operations Systems ("COS") personnel, identifying blocks on the Eligible List and blocks requiring protection;
- COS reviews the reports of the RCAs and confirms the accuracy of the Eligible List based on a manual analysis of live billing system views;
- COS must respond to the RCA in order to confirm the results of its accuracy review;
- COS must migrate blocks from general inventory to pooled inventory locations – assigned and unassigned
- RCA must prepare donation and forecast forms and submit them via the Pooling Administration System (PAS).
- Intra-service provider ports must then be conducted.

During this process, several systems within T-Mobile's network would have to be modified or updated. For example, T-Mobile would have to update or modify the following systems:

The systems and network processes start with the ***Billing and Provisioning System***, where the bulk of the manual intervention would be required if the FCC granted the CPUC Petition. In order to raise the contamination threshold, tables within the ***Billing and Provisioning System*** database must be updated manually to reflect changes associated with the higher contamination threshold for the affected NPAs. Once all updates are completed, testing must be performed to ensure that the updated information is accurate, and any problems must be corrected before the updated information is downloaded to the ***Adjunct Location Register ("ALR")***.

The ***ALR*** in turn identifies the ***Home Location Register ("HLR")*** with which the customer information is currently associated and updates that ***HLR***.

Translation changes are also required in the ***Mobile Switching Center ("MSC")*** in order to ensure the MSC knows whether to perform an LNP database dip for a particular call or to route the call based solely upon routing information in the MSC itself. As with all updates, testing must be performed upon completion to ensure that the translations were input correctly and any errors must be corrected.

In addition to the significant costs associated with the personnel hours required to accomplish these tasks, raising the contamination threshold will increase the costs that T-Mobile incurs for LNP database dips by increasing the quantity of dips that T-Mobile must perform in order to route calls correctly.

As these brief descriptions illustrate, grant of the requested waiver would impose significant burdens and costs on carriers and consumers without resulting in any significant benefits. Accordingly, grant of the requested waiver would impose unnecessary regulatory burdens. The Commission has repeatedly emphasized that the public interest is not served by the imposition of unnecessary regulatory burdens.¹⁴ Therefore, grant of the requested waiver would not serve the public interest.

¹⁴ See, e.g., *Application of General Electric Company; GE Subsidiary, Inc. 21; and MCI Communications Corporation; For Authority to Transfer Control of RCA Global Communications, Inc.*, 3 FCC Rcd 2803, ¶ 46 (1988) (finding that "the public interest is not served by the imposition of unnecessary regulatory burdens on nondominant carriers with consequent costs and inefficiencies").

C. **No Special Circumstances Warrant A Deviation from the Commission's Rules**

The CPUC claims that "California's severe shortage of available numbers to meet growing customer needs also constitutes special circumstances warranting a deviation from the 10 percent contamination rule."¹⁵ However, this does not fall within the type of "special circumstances" that *could* warrant a deviation from the Commission's general rule. In order to avoid NPA exhaust, the CPUC has employed several number conservation tools, including severe rationing, pooling trials, reclamation activities and an extremely high scrutiny of emergency petitions for numbering resources. Notwithstanding these efforts, certain NPAs in California are still in imminent exhaust and require the implementation of area code relief per the Commission's rules and policies. As the Commission has explained:

We have enlisted states to assist us in numbering resource optimization efforts by delegating significant authority to them to implement certain measures. . . . The grants of authority to the state commissions, however, were not intended to allow the states to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief.¹⁶

The Commission has emphasized this point in numerous delegations to state commissions:

The grants of authority herein are not intended to allow the state commissions to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief. Although we are giving the state commissions tools that may help to prolong the lives of existing area codes, the state commissions continue to bear the obligation of implementing area code relief when necessary, and we expect the state commissions to fulfill this obligation in a timely manner. Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible. If state commissions do not fulfill these obligations in a timely

¹⁵ CPUC Petition at 2.

¹⁶ *Numbering Resource Optimization*, 16 FCC Rcd 306, ¶ 8 (2000).

manner, we may be compelled to reconsider the authority delegated to them herein.¹⁷

Notwithstanding the CPUC's efforts, there is still a numbering crisis in certain NPAs in California. In these NPAs, the time for area code relief is past due. In order to comply with the Commission's rules and policies, the CPUC should alleviate this current numbering crisis by immediately implementing area code relief in the form of an all-services overlay, not waiver of the Commission's rules with respect to contamination thresholds. In any event, the Commission cannot allow any petitioner to base a waiver request upon "special circumstances" that resulted from the lack of timely area code relief in contravention of the Commission's rules.

D. The Public Interest Is Served By Compliance With The Commission's Current Numbering Rules

After a full review of the record in this proceeding, the Commission rejected proposals for a 25 percent contamination threshold when it adopted the national, uniform number pooling framework, finding that a 10 percent contamination threshold better served the public interest. The Commission's finding that a 10 percent contamination threshold would better serve the public interest than a 25 percent contamination threshold was well grounded in the record. Indeed, "both the NANC Report and INC Number Pooling Report recommend that carriers donate thousands-blocks with *up to a ten percent threshold contamination level* to a pool within a rate center."¹⁸ Although the period for reconsideration of this finding has long passed, the CPUC did not identify any new facts or rationale to suggest that the Commission's conclusion

¹⁷ *Numbering Resource Optimization*, 16 FCC Rcd 15852, ¶ 10 (2001).

¹⁸ *First Report and Order* at ¶ 190 (emphasis added).

was incorrect, or that the public interest would be better served by increasing the contamination threshold to 25 percent in California.

Even if the CPUC could demonstrate that a 25 percent contamination threshold would be more efficient than a 10 percent contamination threshold in California, and it cannot, the CPUC could not demonstrate that requiring carriers to conform with different pooling requirements in different states would serve the public interest. National uniformity of the contamination threshold serves the public interest. As the Commission explained when it adopted the national pooling framework:

national requirements sufficiently support our numbering resource optimization goals while ensuring that service providers are subject to the same rules and requirements for each state in which they operate. We also find that compliance with a national, uniform framework for thousands-block number pooling will permit service providers to avoid having to conform with different requirements for every jurisdiction in which they operate, which would be unwieldy and inefficient for service providers from both a regulatory and a financial perspective. Moreover, a lack of uniformity would harm consumers, who would likely incur the costs imposed on service providers operating under disparate pooling regimes.¹⁹

The CPUC did not address any of the FCC's concerns about uniformity of pooling requirements in its petition. As such, the CPUC has not met its burden to demonstrate that the public interest would be served by deviating from the uniform national framework in California.

II. FOCUSING RESOURCES ON NATIONAL ROLL OUT OF NUMBER POOLING AND PORTABILITY WOULD SERVE THE PUBLIC INTEREST FAR BETTER THAN GRANT OF THE REQUESTED WAIVER

Number pooling is a far more important numbering optimization measure than raising the contamination threshold. The national thousands-block pooling rollout is underway,

¹⁹ *Second Report and Order* at ¶ 46.

with pooling being introduced within 21 area codes each quarter through the end of 2003.²⁰ The burdens associated with implementation of pooling are significant, as the CPUC recognized when it convinced the FCC to reduce the number of California area codes in which pooling is implemented simultaneously in order to reduce the burden on carriers in California.²¹

The burden during this timeframe is even greater for wireless carriers, which are also implementing local number portability (“LNP”).²² The burdens associated with the introduction of wireless LNP are very high, as the Commission recognized when it extended the deadline for implementation of wireless LNP to November 24, 2003.²³ The Commission extended the deadline for implementation of wireless LNP to “allow carriers to focus on successfully completing all of the tasks necessary for pooling,” which the Commission recognizes “is particularly complex for wireless carriers because of the mobile nature of wireless service and the need to support roaming.”²⁴ The Commission has explained that it expects wireless carriers to fulfill their commitment to “devote considerable resources to correct the unforeseen technical challenges surrounding a successful implementation.”²⁵

Requiring carriers in California to raise the contamination threshold to 25 percent could interfere with their efforts to implement pooling and portability. Specifically, carriers would have to rely on personnel and resources needed to implement number portability and

²⁰ See *Numbering Resource Optimization*, 17 FCC Rcd 7347 (2002) (adopting pooling rollout schedule).

²¹ *Id.* at ¶ 5.

²² See *Verizon Wireless’s Petition for Partial Forbearance from the CMRS Number Portability Obligation*, 17 FCC Rcd 14972 (2002).

²³ *Id.* at ¶¶ 23-24.

²⁴ *Id.* at ¶ 24.

²⁵ *Id.*

pooling in order to raise the contamination threshold. This could hinder the carriers' ability to resolve issues associated with the deployment of both pooling and portability, including problems affecting customer service and the comprehensive testing of portability systems and procedures. Accordingly, the Commission should not allow an unnecessary regulatory burden to distract from efforts to roll out national pooling and portability.

III. CONCLUSION

For the foregoing reasons, the FCC should deny the CPUC's petition for waiver of the contamination threshold requirement.

Respectfully submitted,

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Dated: December 13, 2002

CERTIFICATE OF SERVICE

I, Iva Tate, a legal secretary at Kelley Drye & Warren LLP, do hereby certify that on this 13th day of December, 2002, a copy of the foregoing "COMMENTS OF T-MOBILE USA, INC.," was sent by first class, United States mail, postage prepaid, unless otherwise indicated, to each of the following:

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A handwritten signature in black ink, appearing to read 'Iva Tate', written over a horizontal line.

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